

Internal Revenue Service
memorandum

CC:INTL-875-87

RAWalker

date:

JAN 20 1988

to:

Assistant District Counsel, Denver

CC:DEN

from:

Acting Senior Technician Reviewer, Branch 1
Associate Chief Counsel (International)

CC:INTL:1

subject:

Application of IRC §1463 to IRC §6651

This responds to your memorandum dated November 25, 1987, inquiring about whether §1463 prohibits the Service from collecting the additions to tax under IRC §6651(a)(1) and (2).

The facts upon which the request is based are as follows. During [REDACTED] and [REDACTED], [REDACTED], a Canadian corporation not connected with a United States business, earned interest income for which tax was owed pursuant to IRC §881. Tax was not withheld as required under IRC §1442. On extension, foreign corporate income tax returns, Forms 1120F, were filed for those years. Full payment of taxes due was made. You have reported that no evidence of fraud or an intent to evade payment is apparent. The Philadelphia Service Center assessed an addition to tax under IRC §6651(a)(1) and (2) and for failure to pay estimated tax under IRC §6655. The penalty under §6651(a)(1) has been abated. Upon technical advice, penalty under §6655 also has been abated.


IRC §6651(a)(1) imposes an addition to tax for failure of a taxpayer (including a foreign corporation) to file, among other returns, an income tax return. IRC §6651(a)(2) imposes an addition to tax for failure of that taxpayer to pay any tax shown on such return. IRC §1463 and the regulations thereunder, however, in part, provide that if the tax required to be withheld under Chapter 3 of the Code is paid by the recipient of the income, then no penalty shall be imposed on or collected from the recipient of the income for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

The U.S. interest income earned by the taxpayer in this case is subject to U.S. income tax under IRC §881, and to the withholding thereof pursuant to IRC §§1442(a) and 1441(b). Under the facts of this case, the taxpayer's failure to timely file a return and pay the tax on such income was not due to fraud or an attempt to evade the tax. Thus, pursuant to the express provisions of IRC §1463, no penalty for failure to timely file a return or pay tax may be imposed on the taxpayer.

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Nonassertion of the §6651(a) penalties in this situation might appear to allow abuse of the requirements to timely file a return and timely make tax payments. The relief from the section 6651(a) penalties offered by section 1463, however, is available to the withholding agent or to the recipient of the income on which withholding should have been made only if the other actually paid the tax and if fraud or evasion is not present. Since the section 1463 relief is not available unless the tax has been paid, any abuse that may arise as a result of not imposing the penalty is minimized.

Should you have any questions on the foregoing, please contact Robert Walker at FTS 287-4851.



CHARLES A. RAY